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**Hotel Nikko Chicago and International Union of Operating Engineers, Local 399, AFL-CIO.
Case 13-CA-33861**

March 11, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On January 11, 1996, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 13-RC-18978. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting a defense.

On February 7, 1996, the General Counsel filed a Motion for Summary Judgment. On February 8, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the Charging Party filed a statement in support of summary judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of (1) its position that the Board's Direction of Second Election was incorrect as a matter of law and that the results of the first election should have been certified in the representation proceeding;¹ and (2) its objections to the second election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

¹ We note that the Respondent did not file exceptions to the Regional Director's report, which recommended setting aside the first election.

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

We also find that there are no factual issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

(1) name, classification, shift time, date of hire and current rate of pay of each bargaining unit employee;

(2) a statement of the hotel [sic] current policies regarding paid holidays (number, eligibility requirements) vacations (schedule and accumulation) leave of absence, sick days, personal days, health insurance, retirement program (summary plan descriptions would suffice) daily and week [sic] overtime, bereavement leave, jury pay, job bidding, seniority rights and finally a current departmental shift schedule.

The Respondent's answer admits that the Respondent refused to provide this information to the Union. Further, although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that such information is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation, with an office and place of business in Chicago, Illinois, has been engaged in the business of hotel ownership and management. During the calendar year ending December 31, 1995, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its Chicago, Illinois facility goods valued in excess of \$5000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held on January 12, 1995, the Union was certified on October 30, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All engineering/maintenance employees, including the assistant chief engineer, employed by the Employer at its hotel presently located at 320 North Dearborn Street, Chicago, Illinois; but excluding all other employees, office clerical employees, guards, and supervisors including the chief engineer.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about November 3, 1995, the Union has requested the Respondent to bargain and to furnish information, and, since about November 17, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 17, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817

(1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Hotel Nikko Chicago, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 399, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All engineering/maintenance employees, including the assistant chief engineer, employed by the Employer at its hotel presently located at 320 North Dearborn Street, Chicago, Illinois; but excluding all other employees, office clerical employees, guards, and supervisors including the chief engineer.

(b) Furnish the Union the information that it requested on November 3, 1995.

(c) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 11, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 399, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All engineering/maintenance employees, including the assistant chief engineer, employed by us at our hotel presently located at 320 North Dearborn Street, Chicago, Illinois; but excluding all other employees, office clerical employees, guards, and supervisors including the chief engineer.

WE WILL furnish the Union the information that it requested on November 3, 1995.

HOTEL NIKKO CHICAGO